

### Remarks

After the present amendments in response to an office action mailed on June 16, 2003, claims 1-6 and 11 remain pending and claims 7-10 are cancelled without prejudice or disfavor. Claims 1 and 11 are amended as suggested by the Examiner and an alleged prior art rejection is traversed. No new term is added with the amendments.

#### I. Rejection under 35 USC § 112 (New Matter)

Claims 1-6 and 11 are rejected under 35 U.S.C. 112, first paragraph, as allegedly containing new subject matter. An embodiment of the claimed invention has the advantage of greater stability. See for example "their stability is ensured by the cell membrane, cell wall...." as described on page 1, three lines from bottom of the specification. However, this rejection now is moot in view of the removal of this phrase in the amended claims.

#### II. Rejection under 35 USC § 112 (Indefinite)

Claims 1-6 and 11 are rejected on indefiniteness grounds under 35 U.S.C. 112, second paragraph.

In the office action, the Examiner has suggested new claims 1 and 11 that overcome the indefiniteness rejection. Applicants have adopted the new claim language and amended the claims accordingly. Reconsideration and removal of this rejection earnestly are solicited.

#### III. Rejections under 35 USC § 102

Claims 1-6 and 11 are rejected under 35 U.S.C. 102(b) for alleged anticipation by

JP 09-308481 [A01].

The claims recite a material (culture "precipitate" in unamended claims, or "dried microbial cells" in the amended claims), that comprises at least 3 mass % of carotenoids. On page 3 of the office action, the examiner argues that JP 09-308481 discloses a dried biomass that contains more than 3% carotenoids as shown in Table 12. However, the legend of Table 12 indicates mg per gram, and really shows a total of 4.62 mg/gm, or 0.462% by mass, which is much lower than and not even close to the claimed figure of 3%. Table 11 also is typical and shows 0.339% by mass carotenoids.

This reference does not include the above 3% by weight claim element and therefore does not anticipate. Reconsideration and removal of this rejection is solicited.

## CONCLUSION

In view of the above amendment and remarks, applicants respectfully request withdrawal of all objections and rejections, and a notice of allowance. The Examiner is invited to contact the undersigned attorney for applicants at 202-912-2195 for any reason related to the advancement of this case.

Respectfully submitted,

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